COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{Chapter VIII, Rule 32(2) (b)}

Description of the Case.

CRIMINAL APPEAL No. 1208 of 2001
(Old No.872 of 1987)

Chhotey Shah & others

.....Appellants

Versus

State

..... Opp. Party

Sri U.C. Bailwal, learned amicus curiae for the appellants
Sri Nandan Arya, learned AGA for State/opposite party

Approved for reporting.
~~Not approved for reporting.~~

Date: July 12, 2007

(**Dharam Veer, J.**)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL No. 1208 of 2001
Old No.872/1987

1. Chhotey Shah son of Bhullan Shah Resident of Mahaba, P.S. Sahabad, District Rampur.
2. Ram Bilas S/o Jhamka Saini R/o Tiwada, P.S. Katra, District Muzaffarpur(Bihar)
3. Ompal S/o Tehar Singh R/o Mhaba, P.S. Sahabad, Rampur

All at present residing in Mohalla Ghas Mandi, Kasba and P.S. Rudrapur, District Nainital

.....Appellants

Versus

The State

.....Opposite Party

Dated: July 12, 2007

Sri U.C. Bailwal, learned amicus curiae for the appellant.
Sri Nandan Arya, learned AGA for the respondent.

HON. DHARAM VEER, J.

This appeal, preferred under Section 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) is directed against the judgment and order dated 11.03.1987 passed by II Additional Sessions Judge, Nainital in Session Trial No.65 of 1985, State Vs. Ram Bilas & others, whereby, the learned II Additional Sessions Judge was convicted the appellants under Section 452/308 r/w Section 34 and 323 of The Indian Penal Code, 1860 (*hereinafter to be referred as I.P.C.*). The appellants Ram Bilas, Om Pal and Chhotey Shah were awarded sentenced for three months R.I. and Rs.200/- as fine to each of the appellants for the offence punishable under Section 452 I.P.C. In default of fine, they were directed to undergo one month's simple imprisonment. Further, appellants Ram Bilas and Chhotey Shah were awarded sentence for six month's rigorous imprisonment for the offence punishable under Section 308 r/w Section 34 I.P.C. and appellants Ram Bilas and Chhotey Shah were also sentenced to fine of Rs.300/- each for the offence punishable under Section 323 I.P.C. In default of payment of fine, it was directed that they were directed to undergo one month's simple imprisonment. Appellant Om Pal was sentenced to six month's rigorous imprisonment for the

offence punishable under Section 308 of the I.P.C. He was further sentenced for the offence punishable under Section 323 I.P.C. and to pay a fine of Rs.300/- and in default of payment of fine, it was directed that the appellant shall undergo one month's simple imprisonment. Out of the fine, realized from the appellants i.e.Rs.1500/-, it was directed that a sum of Rs.1,000/- will got to the injured Jiwan Lal and Smt. Ramwati. All the sentences of imprisonment shall run concurrently.

2. In brief, the prosecution's case is that Puran Lal went to the Police Station, Rudrapur on 07.03.1985 at 9:05 P.M. and orally reported to the police that the appellants Om Pal, Chhotey Shah and Ram Bilas took liquor in the day, which was objected by Jiwan Lal, who was the brother of informant Puran Lal. On this at about 7:30 P.M. in the evening, Om Pal armed with lathi and Ram Bilas and Chhotey Shah came to the house of Puran Lal. They went inside the house and took Jiwan Lal out of the house. All the three appellants enquired from Jiwan Lal as to why he was discourteous to them in the daytime. Chhotey Shah and Ram Bilas caught hold of Jiwan Lal and Om Pal gave a hit on the head of Jiwan Lal by the lathi which was being carried by him. On being an alarm raised by Puran Lal, Ramwati wife of Jiwan Lal arrived at the scene of occurrence. The appellants also inflicted injuries on her. On hearing the alarm, the witnesses Sabir, Shivcharan and Lodhe Rajpoot and few other persons arrived at the scene of occurrence. On seeing the witnesses coming, the appellants ran away. Due to beating Jiwan Lal received serious injury on his head. For the above said incident, Puran Lal has lodged the oral report in the Police Station, Rudrapur on 07.03.1985 at about 21:05 P.M. On the basis of oral report, the chick F.I.R. was prepared by the Head Moharrior, Brijendra Singh, that report is Ex.Ka.1. The entry was made in the G.D., the copy of G.D. is Ex.Ka.6. The injured Jiwan Lal was medically examined by the Medical Officer in J.L. Nehru Hospital, Rudrapur on 07.03.1985 at 9:25 P.M. The injury report is Ex.Ka.2. Smt. Ramwati was also medically

examined by the same doctor in J.L. Nehru Hospital, Rudrapur on 07.03.1985 at 9:35 P.M., the injury report is Ex.Ka.3. The investigation of the case was entrusted to S.I., R.B. Singh, PW.6 who has recorded the statements of the witnesses and injured persons and inspected the spot and prepared the site plan that is Ex.Ka.4. The genuineness of the copy of G.D. was admitted by the counsel for the defence and it was exhibited as Ex.Ka.6.

3. After completing the investigation of the case, the Investigation Officer has submitted the charge sheet under Sections 452/308/323 I.P.C. on 09.03.1985, that is Ex.Ka.5.

4. The Chief Judicial Magistrate, Nainital has committed the case to the court of Sessions on 21.03.1985 after complying with the provisions of Section 207 Cr.P.C.

5. The learned II Additional Sessions Judge, Nainital has framed the charge against the appellants Ram Bilas, Om Pal and Chhotey Shah under Section 452 I.P.C. on 05.02.1986. The charge was read over and explained to the appellants who pleaded not guilty and claimed to be tried. The charge against the appellants Ram Bilas and Chhotey Shah was also framed by the II Additional Sessions Judge under Section 308 read with Section 34 I.P.C. and under Section 323 read with Section 34 I.P.C. on 05.02.1986. The charge was read over and explained to the appellants who pleaded not guilty and claimed to be tried. The charge has also framed against the appellant Om Pal under Section 308/323 I.P.C. on 5.02.1986. The charge was read over and explained to him who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined PW.1 Puran Lal, complainant of the case, PW.2 Jiwan Lal, who was the injured witness, PW.3 Ramwati, injured witness, PW.4 Sabir, who was an eye witness, PW.5 Dr. P.K. Tyagi, who has conducted the medical examination of injured Jiwan Lal and Ramwati and PW.6 S.I., R.B. Singh, Investigation Officer of the case.

7. After that the statements of the appellants were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. They did not produce any oral and documentary evidence in support of their case.

8. After appreciating the evidence on record, the learned II Additional Sessions Judge, Nainital has convicted the appellants under Section 452 I.P.C., 308 read with Section 34 I.P.C. and u/s 323 of I.P.C. The appellants Ram Bilas, Om Pal and Chhotey Shah were sentenced to three months R.I. and Rs.200/- as fine to each of the appellants for the offence punishable under Section 452 of the I.P.C. In default of fine, they were also directed to undergo one month's simple imprisonment. Further, appellants Ram Bilas and Chhotey Shah were sentenced to six month's rigorous imprisonment for the offence punishable under Section 308 read with Section 34 I.P.C. and appellants Ram Bilas and Chhotey Shah were also sentenced to a fine of Rs.300/- each for the offence punishable under Section 323 of the I.P.C. In default of payment of fine, it was directed that they shall undergo one month's simple imprisonment. Appellant Om Pal was sentenced to six month's rigorous imprisonment for the offence punishable under Section 308 of the I.P.C. He was further sentenced for the offence punishable under Section 323 I.P.C. to pay a fine of Rs.300/- and in default of payment of fine, it was directed that the appellant shall undergo one month's simple imprisonment. Out of the fine, realized from the appellants i.e.Rs.1500/-, it was directed that a sum of Rs.1,000/- will go to the injured Jiwan Lal and Smt. Ramwati. All the sentences of imprisonment shall run concurrently.

9. I have heard Sri. U.C. Belwal, learned amicus curiae for the appellants and Sri Nandan Arya, learned AGA for the State and perused the entire record of the case.

10. To prove its case, prosecution has examined PW.1 Puran Lal, who has stated that this incident took place last year on the day of Holi. In the evening at about 7:30 P.M. the appellants

Ram Bilas, Chhotey and Om Pal came to his house. Ram Bilas was armed with knife (Chhuri), whereas Chhotey and Om Pal were armed with lathis. All the three appellants came to his house and enquired from his brother Jiwan Lal that why he was so discourteous to them in the daytime. Chhotey and Ram Bilas caught hold of his brother and Om Pal inflicted a lathi blow on the head of his brother Jiwan Lal. Jiwan Lal fell down on the ground due to the injury. When wife of Jiwan Lal appeared on the scene of occurrence to save her husband, then Om Pal also beaten her by lathi. On being alarm raised, witnesses Sabir, Shivcharan and many other persons arrived on the scene of occurrence. They also saw the incident. On seeing the witnesses, the appellants ran away. He took injured Jiwan Lal and his wife to the Police Station, Rudrapur and there he reported the matter to the Police orally which was reduced into writing, he has proved this report i.e. Ex.Ka.1. The witness has also stated that there was light of lantern (Dibiya) inside the hut. He identified the appellants in the light of lantern (Dibiya) and appellants were known to him before the incident. This witness was cross-examined at length but nothing has come out, which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

11. PW.2 Jiwan Lal, who is an injured witness, has stated that in the daytime on the last Holi, appellants Ram Bilas, Chhotey and Om Pal were making noise after taking liquor. This was protested by him on which they intimidated him for the dire consequences. In the evening at about 7:30 P.M., when he was sitting inside the house of Puran Lal, the appellants appeared on the scene of occurrence. Appellant Om Pal was armed with lathi. All the three appellants went inside the hut of Puran Lal and dragged him out of the hut. Appellants Ram Bilas and Chhotey Shah caught hold him and Om Pal gave a lathi blow on his head, resulting in a serious head injury. When his wife came to rescue him, she was also beaten by the appellants. Then Sabir, Shivcharan and Chhotey appeared on the scene of occurrence

and on hearing the alarm, the appellants ran away. This witness has further stated that he knew the appellants before the incident and he also identified them in the light of lantern (Dibiya). After that he went to the Police Station along with his brother and wife and from there they went to the hospital for treatment. This witness was also cross-examined at length but nothing has come out, which may create any doubt in his evidence. The evidence of this witness is trustworthy, reliable and natural.

12. PW.3 is Ramwati, who is also an injured witness. She has stated that on the day of Holi, the appellants Ram Bilas, Chhotey and Om Pal were making noise after taking liquor, then her husband asked them not to do so, then the appellants threatened him for dire consequences. In the evening at about 7:30 P.M., when they were sitting inside the house of Puran Lal, then the appellants dragged the hand of Jiwan Lal and took him outside the hut. Then Om Pal caused the injury to Jiwan Lal by lathi. She had tried to rescue him, then Om Pal had also caused injury on her by lathi. Then by making noise, witnesses Shivcharan, Sabir and the villagers had reached on the place of occurrence, then the appellants had ran away from there. After that she along with her husband and brother in law went to the Police Station and thereafter went to the hospital and they were medically examined there. This witness was cross-examined at length but nothing has come out, which may create any doubt in her evidence. The evidence of this witness is trustworthy, reliable and natural.

13. PW.4 is Sabir who has stated that the appellants were well known to him before the incident. On the day of incident, he was living in Ghasmandi, Rudrapur. On the date of occurrence at 7:30 P.M. in the evening, when he along with one person was walking, then he heard the noise from the house of Puran Lal. Then, he reached there and he saw that Jiwan Lal got the injury on his head and had fallen down. The appellants Ram Bilas, Om pal and Chhotey had ran away from the place of occurrence.

Then Jiwan Lal was taken to the Police Station in a rickshaw. He identified all the three appellants when they were running. This witness was cross-examined at length but nothing has come out, which may create any doubt in his evidence. The evidence of this witness is trustworthy and natural.

14. PW.5 is Dr. P.K. Tyagi, who has stated that on 07.03.1985 he was posted as Medical Officer in J.L. Nehru, Hospital, Rudrapur. On that day, Jiwan Lal was taken by the Constable Pritam Singh at 9:25 P.M. and he has found the following injuries on his person: -

> *Lacerated wound on the left side of skull 5.0 cm x ½ cm x bone deep situated 9.0 cm above the left eyebrow. Fresh bleeding present.*

X-ray skull A.P.O. and lateral view was advised. The injury was kept under observation. Injury was fresh and could possibly be come on 07.03.1985 at 7:30 P.M. and this injury could be possible by hard and blunt object such as Lathi. He has prepared the injury report at the time of medical examination, that injury report is Ex.Ka.2.

On the same day at 9:35 P.M., Smt. Ramwati brought to him by Constable, 368 Naubat Singh for medical examination. She was medically examined by the same doctor and following injuries were found on her person: -

1. *Unscabbed abrasion on the interior aspect of the left forearm 2.0 cm. x 1.0 cm situated 1.0 cm. above the left wrist joint.*
2. *Bruise with swelling left big toe. Colour red.*

The doctor has stated that the above said injuries were simple in nature and could possibly be caused by hard and blunt object such as Lathi. He has prepared the injury report at the time of medical examination, that injury report is Ex.Ka.3.

15. PW.6 S.I., R.B. Singh, Investigation Officer, who has stated that from 07.03.1985 to 09.03.1985, he was posted as Sub-Inspector in Police Station, Rudrapur. The investigation of the case was entrusted to him. During the investigation, he has recorded the statements of witnesses and of the injured persons and has prepared the site plan of the place of occurrence, i.e.

Ex.Ka.4. After completing the investigation, he has submitted the charge sheet that is Ex.Ka.5.

16. After that the statements of the appellants were recorded under Section 313 Cr.P.C. who have denied the allegations made against them and they have stated that they have been falsely implicated due to the enmity. However, they did not produce any evidence in their defence.

17. Sri U.C. Belwal, learned amicus curiae appeared on behalf of the appellants has submitted that on the basis of the evidence discussed above, the prosecution has not able to prove that the incident was happened in a manner as has been stated by the prosecution. He has also submitted that the injuries on the body of the injured persons were not caused in such a manner as has been stated by the prosecution.

18. From the evidence discussed above, it is clear that on 07.03.1985 at about 7:30 P.M. in the evening, the appellants went to the house of Puran Lal and they dragged Jiwan Lal out from the house. P.W.2 Jiwan Lal was caught hold by Ram Bilas and Chhotey Lal and appellant Om Pal had caused injury by lathi on his head and he fell down. When the appellants were beating Jiwan Lal, then his wife Smt. Ramwati also reached on the spot in order to save him and Om Pal had also caused injuries to Smt. Ramwati. Sabir, Shivcharan and the other people who had arrived on the scene of occurrence, witnessed the incident. After that, Puran Lal PW.1 has lodged the report orally to the Police Station, Rudrapur. The distance of the Police Station from the place of occurrence was 1Km., as shown in the chick F.I.R. The F.I.R. was lodged on 07.03.1985 at 21:05 P.M. in the Police Station, Rudrapur. P.W.2 Jiwan Lal was medically examined by the Medical Officer, P.W.5 Dr. P.K. Tyagi, in J.L. Nehru Hospital, Rudrapur on 07.03.1985 at 9:25 P.M. and his wife Smt. Ramwati was also medically examined by the same doctor on the same day at 9:35 P.M. Hence, the statements of Puran Lal, who is the eye witness, P.W.2 Jiwan Lal (injured witness) and P.W.3 Smt. Ramwati (injured witness) are

corroborated by the statement of PW.5 Dr. P.K. Tyagi and also by the injury report, i.e. Ex.Ka.2 of Jiwan Lal and Ex.Ka.3 of Smt. Ramwati. PW.4 Sabir has also supported the statements of PW.1 Puran Lal, PW.2 Jiwan Lal and PW.3 Smt. Ramwati. Thus, from the evidence discussed above, it is well established beyond reasonable doubt that the appellants went to the house of Puran Lal and from there, they dragged Jiwan Lal out of the hut and appellants Ram Bilas and Chhotey caught hold Jiwan Lal and appellant Om Pal inflicted a Lathi injury on the head of Jiwan Lal. When the wife of Jiwan Lal, Smt. Ramwati came to save her husband, she was also beaten by these appellants and the lathi injury caused to her by Om Pal. Hence, the argument of learned counsel for the appellant that the prosecution has not able to prove that the incident was happened in a manner as has been stated by the prosecution, has no force and is not acceptable.

19. Learned counsel has further submitted that the F.I.R. is delayed. From the evidence discussed above, the incident was happened on 07.03.1985 at about 7:30 P.M. and the distance from the Police Station was 1 km and they were taken to the Police Station in Rickshaw. In this way, the F.I.R. cannot be said to be delayed F.I.R. and the F.I.R. was lodged within the reasonable time as per the circumstances discussed above.

20. Thus, in this way, the prosecution has established its case beyond reasonable doubt against the appellants under Sections 452/323 IPC and under Section 308 IPC against the appellant Om Pal and under Section 308 read with Section 34 IPC against the appellants Chhotey Shah and Ram Bilas. The appellants were rightly sentenced to three months R.I. and Rs.200/- as fine each for the offence punishable under Section 452 of the I.P.C. and in default of fine, they were also rightly directed to undergo one month's simple imprisonment. Further, appellants Ram Bilas and Chhotey Shah were rightly sentenced to six month's rigorous imprisonment for the offence punishable under Section 308 read with Section 34 I.P.C. and they were also rightly sentenced to fine of Rs.300/- each for the offence punishable

under Section 323 of the I.P.C. and in default of payment of fine, it was rightly directed that they shall undergo one month's simple imprisonment. Appellant Om Pal was also sentenced to six month's rigorous imprisonment for the offence punishable under Section 308 of the I.P.C. and he was further sentenced for the offence punishable under Section 323 I.P.C. to pay a fine of Rs.300/- and in default of payment of fine, it was also directed that the appellant shall undergo one month's simple imprisonment. Out of the fine, realized from the appellants i.e.Rs.1500/-, it was further rightly directed that a sum of Rs.1,000/- will got to the injured Jiwan Lal and Smt. Ramwati and accordingly all the sentences of imprisonment were directed to run concurrently.

21. On the basis of the evidence discussed above, I do not find any irregularity or illegality in the judgment and order dated 11.3.1987 passed by II Additional Sessions Judge, Nainital.

22. In view of the above, the appeal is devoid of merit and is accordingly dismissed. The judgment and order dated 11.3.1987 passed by II Additional Sessions Judge, Nainital is upheld.

23. Let the record of the case be sent back to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

Dated: 12.07.2007
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